

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D', NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.5811 to 5814/Del/2011  
Assessment Years: 2001-02 to 2004-05

JBM Industries Ltd., Neel House, Lado Sarai, Opposite Qutab Minar, New Delhi	<b>Vs.</b>	DCIT, Circle-4(1), New Delhi
<b>PAN :AAACJ8038J</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. R. Santhanam, Adv.
Respondent by	Smt. Naina Soin Kapil, Sr.DR

Date of hearing	18.12.2018
Date of pronouncement	20.12.2018

**ORDER**

**PER BENCH:**

These appeals by the assessee are directed against a combined order dated 21/10/2011 passed by the Ld. Commissioner of Income-tax (Appeals)-VII, New Delhi [ in short the Ld. CIT(A)] for assessment year 2001-02; 2002-03; 2003-04 and 2004-05. Since common issue of dispute is involved in all these appeals, same were heard together and disposed off by way of this consolidated order for convenience.

**2.** The grounds of appeal raised in ITA No. 5811/Del/2011 for assessment year 2001-02 are reproduced as under:

1. *On the facts and in the circumstances of the case, the CIT(A) has erred both on facts and in law in upholding the illegal order passed by the A.O. and sustaining the illegal addition made by him and the impugned order are, therefore, liable to be set aside and quashed.*
2. *On the facts and in the circumstances of the case, the authorities below have erred in disallowing the revenue expenditure of Rs.29,72,710/- incurred wholly and exclusively for the purpose of expenditure by disregarding the correct factual and legal position and the illegal addition is, therefore, liable to be deleted.*
3. *The authorities below have erred in not following the binding decisions of Courts and Tribunals placed before them directly on the place by the appellant and thereby misled themselves to pass the impugned illegal orders which are liable to be quashed.*
4. *The appellant has furnished all the records and documents as well as supporting data and case law which had not been examined in the proper perspective and the impugned addition cannot be sustained.*
5. *The disputed illegal demands of tax, interest and notice for penalty are, therefore, liable to be set aside and quashed as unsustainable, both of facts and in law.*

**3.** Identical grounds have been raised in other assessment year except change of amount.

**4.** Briefly stated facts of the case are that in the assessment year 2001-02, the assessment under section 143(3) read with section 263 of the Income-tax Act, 1961 (in short 'the Act') was completed after making addition of

Rs.29,72,710/- on account of educational expenses incurred by the assessee for overseas education of Ms Esha Arya, who happened to be daughter of one of the directors of the assessee company. On further appeal, the Ld. CIT(A) dismissed the appeal. In assessment year 2002-03; 2003-04 and 2004-05, similar additions of Rs.16,62,227/-; Rs.21,51,045/- and Rs.3,27,837/-per made by the Assessing Officer on account of educational expenses incurred by the assessee on behalf of Ms Esha Arya, daughter of one of the directors of the assessee company, in assessment orders passed under section 143(3) of the Act. The assessee preferred appeal against the said orders; however, appeals of the assessee were dismissed. In all the four assessment years from 2001-02 to 2004-05, the assessee filed appeal before the Tribunal. The Tribunal in a consolidated order dated 27/02/2009 for the assessment years 2001-02, 2002-03, 2003-04 and 2004-05 restored the issue of disallowance of educational expenses incurred by the assessee on behalf of Ms. Esha Arya, daughter of one of the directors, to the file of the Assessing Officer observing as under:

*“5. We have considered the facts of the case and rival submissions. In the course of hearing, before us,-the- learned counsel was questioned about the fact whether at the time of making application for admission to the MBA programme, the company had sponsored Miss Esha Arya or she had applied independently. He was not able to furnish a copy of her application to the educational institution. However, he placed on record an application made by the assessee for release of foreign exchange for studies abroad for an amount of US\$17147 dated 5.8.2000. The other details filed show that the Boston University had raised bills on Miss Esha Arya and the Thomas Cook Group had released foreign exchange with the name of Miss Esha Arya. In absence of the original application for admission to the Boston University as well as applications made to the authorized dealer for release of foreign exchange, it is not feasible for us to come to any firm conclusion in the matter. Although, we are of the view that while mere relationship is not*

*sufficient to disallow business expenditure, yet, all facts starting from the making of application for admission till making of the last payment have to be taken into account to come to the' conclusion as to whether the expenditure was incurred by the directors of the company out of love and affection towards their daughter or it was an expenditure incurred in the course of business of the assessee. Therefore, we think it fit to restore the matter to the file of the AO, before whom complete evidence available with the assessee in this respect starting from the date of making of the application shall be filed and thereafter he will decide the issue as per Jaw after hearing the assessee. Thus, this ground is treated as allowed for statistical purposes."*

**5.** In compliance to the order of the Tribunal, the Assessing Officer allowed the opportunity of hearing to the assessee and after taking into account submission of the assessee, passed assessment orders, sustaining the disallowance mainly on the ground that the assessee did not produce the original application form of Miss Esha Arya for admission to the Boston University. The Assessing Officer also noted that the assessee did not have any scheme for training of the employees and particularly for imparting higher education.

**6.** On further appeal, the Ld. CIT(A) upheld the disallowance as the assessee failed to produce before him either copy of application form of Ms. Esha Arya or other evidences justifying the expenditure as business expenditure. The relevant finding of the Ld. CIT(A) is reproduced as under:

*"6.2 I have carefully considered the submissions made on behalf of the appellant, the findings of the Assessing Officer and the facts on record. I have also perused the judgments relied upon by learned counsel of the assessee. I have also perused the directions given by the Hon'ble ITAT; New Delhi which were very specific. The appellant was given clear directions by the ITAT to furnish all the facts starting from making the application of admission till making the last payment. However, it is found that no evidence regarding application of admission could be produced by the assessee before the A.O. and also before the undersigned as per the directions of the ITAT It is also pertinent to point out that the appellant had*

*not been able to furnish a copy of the application to the Educational Institution before ITAT as well. The evidences regarding payment of foreign exchange were produced but I am of the considered view that the same are not sufficient to prove the commercial expediency of the expenditure.*

*6.3 It is difficult to comprehend that not even the print-out of the online application for admission is available with the appellant. It cannot be disputed that the process for admission of Miss Esha Arya at Boston University in USA for education must have started much earlier. She had to appear at GMAT for admission in Business Management and the GMAT scores obtained by her would have been considered by the University before offering admission to her. The letter of admission would have also been issued by Boston University. At the time of interview for visa, some evidence in support of her admission in Boston University would have also been produced by Miss Esha Arya before the USA embassy authorities. However, the appellant company has not been able to produce/adduce any direct or circumstantial evidence in order to prove that as to when she got the admission in Boston University.*

*6.4 It is also observed that the assessee has not adopted any procedure for selection of the employees for higher education in Foreign University. Miss Esha Arya was sent for the higher education not on the basis of requirement of the company or her ability but only because of her relationship with the one of the directors of the company. The decisive test in a situation like this is to ask a question whether an assessee will incur expenditure of the type being claimed in case of appellant as business expenditure in case of any employee. If this test is applied, it would be clear that huge expenditure on foreign education is incurred because she is daughter of the Director of the appellant company and such expenditure has no business connection. It is thus apparent that only consideration for incurring huge expenditure on Miss Esha Arya is because she being the daughter of one of the directors of the appellant-company. Thus, the only logical conclusion which could be drawn on these facts of the case is that there is no nexus between education expenses incurred abroad for Miss Esha Arya and the business of the appellant-company. In any case, such expenditure on facts cannot be said to be laid out or expbiTdeTwholly and exclusively for the purpose of business. In view of the foregoing discussion and for the reasons given by the AO, I am of the considered view that the expenditure on education of Miss Esha Arya is in nature of personal expenditure of the Director of the appellant company, which cannot be stated to be laid out or expended wholly and exclusively for the purposes of business of the appellant company. As such, these expenses cannot be considered as allowable expenses under section 37(1) of the Act. Therefore, disallowance made by the AO on account of the educational expenses incurred by the appellant on behalf of Ms Esha Arya, is hereby upheld. As a result, Ground of appeal No. 4 for the assessment years 2001-02, 2002-03, 2003-04 & 2004-05 is dismissed.”*

**7.** Aggrieved with the above finding of the Ld. CIT(A), the assessee is before the Tribunal in 2<sup>nd</sup> round of proceedings.

**8.** Before us, the Ld. Counsel of the assessee filed a paper book containing pages 1 to 224 in respect of all the 4 appeals under consideration. The Ld. counsel referred to page 222 to 224 of the paper book, which was claimed as copy of admission form of Ms. Esha Arya applied to the Boston University and submitted that the assessee has already filed said copy of the admission form before the Assessing Officer. He submitted that the Assessing Officer asked for original copy of the admission form, which was not available with the assessee as the original copy remained with the Boston University. The Ld. counsel also referred to pages 33 to 73 of the paper book, which contained copies of letters addressed to the Thomas Cook India Ltd ( foreign exchange dealer) for release of foreign exchange for studies abroad in respect of all the 4 assessment years involved. The Ld. counsel submitted that the assessee complied with the direction issued by the Tribunal, while remanding the matter to the Assessing Officer, however the Assessing Officer has ignored those documents and he made the addition biased by the finding of his predecessor. The Ld. counsel further referred to page 121 of the paper-book, which is a copy of the resolution passed in the meeting of the board of directors of the assessee company on 8th July, 2000 and submitted that Ms. Esha Arya, was whole time director of the assessee company and the board of directors of the assessee company resolved to bear educational expenses of Ms Asha Arya including

university fee, boarding, lodging, travelling expenses and all other incidental expenses. The Ld. counsel submitted that Ms. Esha Arya, after completion of studies abroad, joined the company and because of her education, the sales turnover of the company increased tremendously and she turned the loss-making assessee company into a profit-making company. The Ld. counsel relied on the submission made before the Ld. CIT(A), a copy of which is available on page 98 to 103 of the paperbook. The Ld. counsel submitted that the Assessing Officer totally disregarded the fact of contribution by Ms Esha Arya, in improving the performance of the company. He submitted that the finding of the Assessing Officer that the company did not have any scheme for training of the employees was not relevant as the company was a closely held company and it was not a public company. In support of the contention that the expenditure was incurred for the purpose of the business of the assessee company and allowable under the provisions of the Act, the Ld. counsel relied on following two decisions:

1. *Commissioner of Income Tax & Anr. Vs. RAS Information Technology (P.) Ltd., (2011) 238 CTR 76 (Ker.)*
2. *Mallige Medical Centre P. Ltd. Vs. Joint Commissioner of Income Tax, [2015] 375 ITR 522 (Karn.)*

**9.** On the contrary, the Ld DR referred to page 222 to 224 of the assessee's paper book, which was claimed by the assessee as application form for admission to the Boston University and submitted that said pages are only a student information, medical history and physical report submitted to

the Boston University at the time of the admission and it was not a admission form submitted to the Boston University and thus, the assessee has failed to comply with the direction of the Tribunal for filing application form for admission to the Boston University. She submitted that the Ld. counsel has misled the Tribunal. She pointed out the date of birth of Ms Esha Arya mentioned in the student information (i.e. 03/06/1982) available on page 222 of the paperbook and submitted that Ms. Esha Arya, barely completed age of 18 years at the time of taking admission to the Boston University and thus she was not possessing required educational qualification or experience for to be appointed as whole time director of the company. The Ld. DR submitted that the assessee company did not get any bond signed from Ms Esha Arya as in eventuality of not joining the company, who would bear the expenses.

**10.** She relied on the finding of the Ld. CIT(A) and submitted that the there was no policy or scheme was framed by the company for a sponsoring foreign education expenses of the employees, under which expenses of Ms. Esha Arya on study abroad were incurred by the company. According to her, the only reason of incurring expenses by the assessee company was that She is daughter of one of the director of the assessee company. She submitted that the assessee has failed to justify the expenses as incurred wholly and exclusively for the purpose of the business of the assessee. She submitted that there are no evidence on record that profitability of the company has increased in subsequent years due to

contribution if any by Ms. Esha Arya. She further submitted that irrespective of whether any evidence of contribution by Ms Esha Arya in profitability of the company , the services rendered in subsequent year, cannot justify allowing the expenses in the year under considerations. The Ld. DR submitted that in the decisions relied upon by the Ld. Counsel, the concerned beneficiary was containing professional degrees and employed in company and thus facts of those cases are distinguishable from the facts of the instant case.

**11.** In the rejoinder, the Ld. counsel of the assessee submitted that a supplementary agreement was made between the assessee and Ms Esha Arya, where she was agreed to work for a period of not less than one year from the date of the completion of higher studies abroad and in case of default she was asked to pay money of Rs.50,000/-. Thus, according to him, the bond was duly signed between the assessee and Ms Esha Arya.

**12.** We have heard the rival submissions and perused the relevant material on record including the paper book submitted by the assessee. In the instant appeals, the common issue involved is whether the expenses on education of Ms Esha Arya, (who, happened to be daughter of one of the directors of the assessee company) at the Boston University, which included college fee, boarding, travelling from India and back and other incidental expenses, have been incurred wholly and exclusively for the purpose of the business and allowable under section 37(1) of the Act or not. The assessee

is before us in second round of proceedings. In first round, the Tribunal, questioned the assessee about the fact whether at the time of making application for admission to the MBA program, the company had sponsored Ms. Esha Arya or she had applied independently. The assessee was not able to furnish a copy of application for admission to the Boston University. In view of failure to substantiate the fact of a sponsoring by the assessee company, the Tribunal restored the matter to the file of the AO directing the assessee to file all evidences starting from the making of the application till making the last payment, for determining whether the expenditure was incurred by the directors of the company out of love and affection towards their daughter or it was an expenditure incurred in the course of the business of the assessee.

**13.** As far as requirement of the filing of the application form, the Assessing Officer has noted that no original application was filed by the assessee before him. The Ld. CIT(A) has also noted that no copy of application for admission was filed by the assessee before him. He has also noted that no other evidence have been filed related to documents submitted during visa interview before the USA Embassy Authorities. Thus, it is evident that the assessee has not complied with the direction of the Tribunal issued at the time of remanding the matter back to the Assessing Officer. Before us also, only information sheet/medical & physical history of the student has been filed and copy of admission form has not been filed.

**14.** We find that the assessee has accepted the decision of the Tribunal in first round of proceedings and no appeal has been filed against the said direction of the Tribunal. In such circumstances, not complying with the direction of the Tribunal, itself is sufficient to dismiss the appeal of the assessee.

**15.** In addition to the above, the documents filed in relation to the remitting of foreign exchange through M/s Thomas Cook private limited, nowhere demonstrate that payments were made as part of the sponsoring agency for furtherance of the business interest of the assessee company. We also find that the assessee has failed to justify its claim of appointment of Ms Esha Arya as a whole time director of the company, barely at the age of 18 years without any relevant educational qualification or experience.

**16.** We also note that in assessment year 2003-04, the Assessing Officer has disallowed the salary of Rs.33,337/- paid by the assessee to Ms. Esha arya observing as under:

*“7.In respect of assessment year 2003-04, the appellant has also raised Grounds of appeal No.5 which relates to the disallowance of the salary to the extent of Rs.33,337/- paid by the appellant to Ms. Esha Arya. This matter was also restored to the file of the AO for fresh adjudication after ascertaining whether any service was rendered by her to the assessee company in this year for during her vocation period. In this regard, the copy of the extracts of the minutes of the meeting of the Board of Directors dated 06.05.2002 was furnished before the A.O. as well as before the undersigned. The above-quoted letter dated 06.05.2002 does not indicate anything about the expenses in question and its justification from the point of commercial expediency. In order to claim a deduction on account of expenditure for purposes of business the onus lies on the assessee to prove that the expenditure was incurred for the*

*purposes of business and was not of a capital nature. If it is to be allowed, the onus is on the assessee to prove the amount of expenditure which can be allowed. In order that an expenditure should qualify for deduction as contemplated by section 37(1), one of the requirements of the provision is that the expenditure must have been laid out wholly and exclusively for the purpose of the business. It cannot be disputed that before an assessee can become entitled to an allowance under that provision, he must satisfy the Department of the purpose for which the amount is spent. It is true that the taxing authorities are not entitled to go into the reasonableness of the expenses, but they are certainly entitled to be satisfied as to the commercial necessity of expending that amount. The question will always be as to the nature of the relation between the expenditure and the business, whether the benefit is remote or near, prospective or immediate, imaginary or real and so forth. The capacity in which the assessee spends will also be relevant. In the instant case, the assessee did not furnish any material to the Assessing Officer to arrive at the conclusion favoring the assessee. The A.O. therefore, exercised his judgment and discretion which cannot be said to be arbitrary or unreasonable. As a result, the addition of Rs. 33,337/- on account of salary paid by the appellant to Ms Esha Arya is confirmed and ground No.5 is dismissed.”*

**17.** We find that the assessee has not taken any ground of appeal against the above finding of the Ld. CIT(A), and, thus, the fact that no services were rendered by her even during vocation period, become final.

**18.** We find that in the case of RAS information technology (p) Ltd., the Hon'ble High Court in para 6 of the decision has noted that during the course of pursuing his postgraduate course at USA, the son of the director of the company updated about the latest trends and developments in the field of consultancy and was also sending key input in the form of articles, research papers etc to enable the company to keep itself updated of the technical know-how and knowledge. Whereas, in the instant case before us, even the claim of

services during the vocation period has not been found to be true. Thus, the ratio of the above decision cannot be applied over the facts of the instant case. In the case of Mallige Medical Centre Private Limited(supra), the daughter of the managing director acquired degree in medicine and she was already employed with company as full-time employee. In the instant case, the daughter of the director barely attained the age of 18 years and completed schooling. Thus, facts of the instant case are distinguishable from the facts of the cases relied upon by the assessee.

**19.** In view of the aforesaid discussion, the grounds of appeal raised by the assessee in all the four appeals are dismissed.

**20.** In result, all the four appeals for assessment years 2001-02, 2002-03, 2003-04 and 2004-05 are dismissed.

***Order is pronounced in the open court on 20<sup>th</sup> December, 2018.***

Sd/-

**[BHAVNESH SAINI]  
JUDICIAL MEMBER**

Sd/-

**[O.P. KANT]  
ACCOUNTANT MEMBER**

Dated: 20<sup>th</sup> December, 2018.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi